D.B.CIVIL SPECIAL APPEAL NO. 332/2006
Indian Red Cross Society v. Madan Singh
D.B.CIVIL SPECIAL APPEAL NO. 322/2006
Indian Red Cross Society v. Dr. Mahesh Kumar Arora
D.B.CIVIL SPECIAL APPEAL NO. 323/2006
Indian Red Cross Society v. Dr. Seema Mittal
D.B.CIVIL SPECIAL APPEAL NO. 324/2006
Indian Red Cross Society v. Mrs. Mariamma Rajan
D.B.CIVIL SPECIAL APPEAL NO. 325/2006
Indian Red Cross Society v. Om Prakash Sharma

Date of order : 08.03.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri Manish Bhandari]
Shri R.K.Jain] for the appellant

Shri R.C.Joshi]
Shri Ajay Kumar Jain] for the respondents

These five special appeals arising from identical orders were heard together and disposed of by this common order.

The appeals are directed against interim orders by which the learned Single Judge stayed future operation of the order terminating services of the respondents, with a direction to the appellant to allow them to work on the post held by them prior to issuance of the termination order.

We heard counsel for the parties at length.

Since the writ petitions are pending before the Single Bench and the issues are yet to be gone into, we refrain from considering the submissions of the counsel for the parties touching upon merit of the

case. The only point for consideration before us at this stage is whether the learned Single Judge was justified in staying the operation of the impugned order by which the services of the respondents had been terminated. We are of the view that any order terminating the services of an employee which is like dismissal or removal from service, should not normally be stayed by interim order. Termination of services results in cessation of employment like dismissal or service and unless issues involved are adjudicated it would not be proper exercise of discretion to stay operation of such orders because order of stay would lead to claim for reinstatement of the person. We do not mean to suggest that in no case order of this kind can be stayed. Where facts are not prima facie in dispute and it appears to the Court that the person concerned can not be adequately compensated, there may be justification to pass interim order in special cases , but where facts are in dispute and the person can be compensated, Court should be loathe to stay operation of such orders.

In the instant case there is dispute between the parties as to whether the scheme for which the respondents were appointed is continuing, the nature of employment and the source from which the respondents were paid emoluments. Case of the appellant is that the respondents were appointed in schemes/programmes which were funded by the State Government and after the Government stopped providing fund it was not possible to retain the persons in employment. According to the respondents, on the other hand, even if the programme came to an

end, they could be adjusted in some other programme considering their long employment ranging between 20-25 years.

Having regard to the nature of the dispute we are satisfied that the learned Single Judge did not correctly exercise discretion in staying operation of the impugned order. It is well settled that where interim relief amounts to granting the main relief, the Court should ordinarily decline to pass order to that effect without adjudication of the issues. In the above premises, we are unable to sustain the impugned orders of the learned Single Judge which are accordingly set aside.

However, having regard to the nature of the case, considering the uncertainties involved besetting the respondents, the fact that they stand deprived of their livelihood, we are of the view that the writ petitions may be heard at an early date. We accordingly direct that writ petitions be listed for hearing before the appropriate Bench as per roster in the month of April, 2007.

The appeals are allowed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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